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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 402**

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**Introduced by Assembly Member Dymally**

February 15, 2005

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An act to add Sections 2013, ~~3022.3, and 3022.4~~ *and 3022.3* to, the Family Code, relating to family law.

### LEGISLATIVE COUNSEL'S DIGEST

AB 402, as amended, Dymally. Family law court: marriage.

Existing law establishes procedures related to proceedings for dissolution of marriage, nullity of marriage, and legal separation, as specified.

This bill would enact the Collaborative Family Law Act, which would allow the parties to those proceedings, by written agreement, to utilize a collaborative law process, as specified, rather than an adversarial judicial proceeding to resolve those disputes. ~~The bill would deem any statement, communication, or work product arising from or made in the course of the process, except any written agreement entered into by the parties, confidential and inadmissible in any noncriminal proceeding, except by written agreement to the~~

contrary by the parties, and would prohibit the court from intervening during that time. If the process terminates without settlement, the bill would then require each party to hire new counsel or represent themselves in any further proceeding, and would require the court to set a case management conference for any petition previously filed, if any.

~~The bill would also authorize the court to impose sanctions under specified circumstances, including contempt. Because existing law authorizes a court to impose sanctions in the form of a fine or imprisonment, or both a fine and imprisonment, for the crime of contempt, the bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.~~

The bill would also require a court to issue a statement explaining the factual and legal basis for its custody decision upon the trial of a question of fact in a proceeding to determine the custody of a minor, upon the request of either party.

The bill would also require the Judicial Council to create an information sheet for parties involved in child custody and visitation matters, as specified, on or before January 1, 2008.

~~The bill would also describe the penalties authorized for a violation of a custody order.~~

*The bill would also request the Committees on the Judiciary of the Senate and Assembly to study and make recommendations for a comprehensive statute governing the practice of collaborative law, as specified.*

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~ no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Collaborative Family Law Act.
- 3 SEC. 2. Section 2013 is added to the Family Code, to read:

1 2013. (a) If a written agreement is entered into by the parties  
2 ~~and their attorneys~~, the parties may utilize a collaborative law  
3 process to resolve any matter governed by this code over which  
4 the court is granted jurisdiction pursuant to Section 2000.

5 (b) “Collaborative law process” means the process in which  
6 the parties ~~and their attorneys~~ *any professionals engaged by the*  
7 *parties to assist them* agree in writing to use their best efforts and  
8 to make a good faith attempt to resolve disputes related to *the*  
9 family law matters as referenced in subdivision (a) on an agreed  
10 basis without resorting to adversary judicial  
11 ~~intervention~~. ~~intervention, except to file the initial petition and~~  
12 ~~response, stipulated orders or judgments, and accompanying~~  
13 ~~documents as may be required under this code, or to have the~~  
14 ~~court approve the settlement agreement, make the legal~~  
15 ~~pronouncements, and sign the orders required by law to~~  
16 ~~effectuate the agreement of the parties as the court determines~~  
17 ~~appropriate. The parties’ attorneys may not serve as litigation~~  
18 ~~counsel, except to ask the court to approve the settlement~~  
19 ~~agreement.~~

20 (c) ~~If neither party files an initial petition for proceedings~~  
21 ~~pursuant to one of the issues listed in subdivision (a), at any time~~  
22 ~~during the collaborative law process the parties may agree in~~  
23 ~~writing to set jurisdiction over all issues to be heard by a court of~~  
24 ~~competent jurisdiction retroactive to any date as far back as the~~  
25 ~~date the parties entered into the collaborative law agreement.~~

26 (d) ~~Section 703.5 of the Evidence Code, regarding competency~~  
27 ~~of witnesses, shall include and apply to collaborative law~~  
28 ~~attorneys and any other professional involved in the collaborative~~  
29 ~~law process.~~

30 (e) ~~Sections 1118 to 1124, inclusive, of the Evidence Code,~~  
31 ~~regarding confidentiality protections on information exchanged~~  
32 ~~in mediation, shall also apply to collaborative law proceedings,~~  
33 ~~including, but not limited to, the following:~~

34 (1) ~~All statements, communications, and work product arising~~  
35 ~~from or made in the course of a collaborative family law case are~~  
36 ~~confidential and are inadmissible in any arbitration,~~  
37 ~~administrative adjudication, civil action, other collaborative law~~  
38 ~~process, or other noncriminal proceeding in which testimony can~~  
39 ~~be compelled, except by written agreement to the contrary by the~~  
40 ~~parties.~~

1     ~~(2) Work product includes, but is not limited to, any written or~~  
2 ~~oral communication between the parties and their attorneys, and~~  
3 ~~written or oral communication, reports, or analysis of any third~~  
4 ~~party professional or expert used in the collaborative law process.~~

5     ~~(3) Notwithstanding this subdivision and the confidential~~  
6 ~~nature of the collaborative law process, all written agreements~~  
7 ~~entered into by the parties during the collaborative law process~~  
8 ~~are deemed admissible in court.~~

9     ~~(4) Anything said, any admission made, or any writing that is~~  
10 ~~inadmissible, protected from disclosure, and confidential under~~  
11 ~~this section before the collaborative law process terminates, shall~~  
12 ~~remain inadmissible, protected from disclosure, and confidential~~  
13 ~~to the same extent after the collaborative process terminates.~~

14     ~~(f) For purposes of this section, a collaborative law process~~  
15 ~~terminates when one of the following conditions is satisfied:~~

16     ~~(1) The parties execute a written settlement agreement that~~  
17 ~~fully resolves the dispute.~~

18     ~~(2) Any party provides all other parties and their attorneys~~  
19 ~~with a writing stating that the collaborative law process is~~  
20 ~~terminated or words to that effect. If an initial petition has been~~  
21 ~~filed, a written notice shall also be filed with the court and served~~  
22 ~~on all parties appearing in the action.~~

23     ~~(3) Any party initiates an adversary judicial intervention.~~

24     ~~(g) If the collaborative law process terminates without~~  
25 ~~settlement, each party shall seek new counsel or represent~~  
26 ~~himself or herself in order to proceed in litigation. Neither~~  
27 ~~attorney in the collaborative law process may act as litigation~~  
28 ~~counsel for either party.~~

29     ~~(h) Pursuant to paragraph (3) of subdivision (e), all written~~  
30 ~~agreements entered into by the parties during the collaborative~~  
31 ~~law process are deemed admissible in court, notwithstanding the~~  
32 ~~termination of the process or the confidential nature of the~~  
33 ~~collaborative law process.~~

34     ~~(i) The collaborative law agreement shall include, but not be~~  
35 ~~limited to, provisions for all of the following:~~

36     ~~(1) The parties' full compliance with disclosure requirements~~  
37 ~~under Chapter 9 (commencing with Section 2100) and candid~~  
38 ~~exchange of all information between the parties and their~~  
39 ~~attorneys as necessary to make a proper evaluation of the case,~~  
40 ~~including, but not limited to, each party's preliminary declaration~~

1 of disclosure, income and expense declaration, and schedule of  
2 assets and debts, all under penalty of perjury, pursuant to Section  
3 2104.

4 (2) ~~Suspending court intervention in the dispute while the~~  
5 ~~parties and their attorneys are using collaborative law procedures~~  
6 ~~requiring court appearances pursuant to local court rules.~~

7 (3) ~~Provisions for jointly hiring mental health, financial, or~~  
8 ~~other professionals to serve as joint experts to assist the parties in~~  
9 ~~the investigation, evaluation, or resolution of issues, as well as~~  
10 ~~assisting the parties in making informed decisions.~~

11 (4) ~~Withdrawal of all attorneys and all other professionals~~  
12 ~~involved in the collaborative law process if the process does not~~  
13 ~~result in settlement of the dispute.~~

14 (5) ~~Expectation that the parties and attorneys shall use their~~  
15 ~~best efforts and good faith to resolve the dissolution of marriage~~  
16 ~~through the collaborative law process.~~

17 (j) ~~Except for good cause, a court that is notified at least 30~~  
18 ~~days before trial that the parties are using the collaborative law~~  
19 ~~process to attempt to settle a dispute may not, until a party~~  
20 ~~notifies the court that the collaborative law process did not result~~  
21 ~~in a settlement, do any of the following:~~

22 (1) ~~Set a hearing or trial in the case.~~

23 (2) ~~Impose discovery deadlines.~~

24 (3) ~~Require compliance with trial preparation orders.~~

25 (4) ~~Dismiss the case.~~

26 (k) ~~The parties shall notify the court if the collaborative law~~  
27 ~~process results in a settlement.~~

28 (l) ~~The court shall refrain from requiring court appearances~~  
29 ~~inconsistent with the parties' agreement pursuant to paragraph~~  
30 ~~(2) of subdivision (i) unless it finds good cause for doing so.~~  
31 ~~Nothing in this section shall be construed to restrict the~~  
32 ~~jurisdiction of the court, including any local rules of court over~~  
33 ~~the matter.~~

34 (m) ~~The court may impose sanctions under any applicable law~~  
35 ~~if any party or any attorney has done any of the following:~~

36 (1) ~~Used the collaborative law process in bad faith for the~~  
37 ~~purpose of unilateral delay.~~

38 (2) ~~Engaged in any concealment, misrepresentation, or~~  
39 ~~perpetuation of the collaborative law process in any way that~~  
40 ~~materially and adversely affected the rights of the other party.~~

~~(3) Engaged in conduct that comes within the provisions of any law providing for the imposition of sanctions.~~

SEC. 3. Section 3022.3 is added to the Family Code, to read:

3022.3. Upon the trial of a question of fact in a proceeding to determine the custody of a minor child, the court shall, upon the request of either party, issue a statement of the decision explaining the factual and legal basis for its decision pursuant to Section 632 of the Code of Civil Procedure.

~~SEC. 4. Section 3022.4 is added to the Family Code, to read:~~

~~3022.4. (a) Any person who violates an order issued by the family court relating to child custody may be in contempt of court and subject to imprisonment, a fine, or both imprisonment and a fine pursuant to the following provisions:~~

~~(1) Section 1218 of the Code of Civil Procedure.~~

~~(2) Section 278.5 of the Penal Code.~~

~~(b) In addition to the penalties described in subdivision (a), a court may take any other action within the scope of its authority regarding custody and visitation.~~

~~SEC. 5.~~

SEC. 4. (a) The Judicial Council shall create an information sheet for parties involved in child custody and visitation matters that informs the parties that they have the right to agree to a custody or visitation arrangement, that if they do not agree, they will be required to participate in child custody mediation, and that if mediation does not result in an agreement, the court will be required to make a determination on the custody issues. The sheet shall also provide information on how to obtain assistance in resolving a custody case, including, but not limited to, information on finding an attorney, ~~including attorneys practicing collaborative law as defined in Section 2013 of the Family Code,~~ information on accessing court based self-help services if they are available, and information regarding other sources of assistance in developing a custodial agreement. The Judicial Council shall adopt this sheet as a statewide form on or before January 1, 2008, and take reasonable steps to ensure that it is distributed statewide and made available to litigants in custody matters.

(b) Funding for creating the notice described in this section shall be derived from existing resources.

1     ~~SEC. 6. No reimbursement is required by this act pursuant to~~  
2     ~~Section 6 of Article XIII B of the California Constitution because~~  
3     ~~the only costs that may be incurred by a local agency or school~~  
4     ~~district will be incurred because this act creates a new crime or~~  
5     ~~infraction, eliminates a crime or infraction, or changes the~~  
6     ~~penalty for a crime or infraction, within the meaning of Section~~  
7     ~~17556 of the Government Code, or changes the definition of a~~  
8     ~~crime within the meaning of Section 6 of Article XIII B of the~~  
9     ~~California Constitution.~~

10    *SEC. 5. (a) It is the intent of the Legislature that legislation*  
11    *be enacted during the 2007–08 legislative session to provide a*  
12    *procedural framework for the practice of collaborative law, as*  
13    *described in Section 2 of this act. Towards that end, the*  
14    *Committees on the Judiciary of the Senate and Assembly are*  
15    *requested to convene a working group to study and make*  
16    *recommendations for a comprehensive statute governing the*  
17    *practice of collaborative law.*

18    *(b) Members of the working group shall include the following:*

19    *(1) Family law attorneys, including members of the Executive*  
20    *Committee of the Family Law Section of the State Bar.*

21    *(2) Representatives from the judicial, executive, and*  
22    *legislative branches.*

23    *(3) Members of the public.*

24    *(c) The working group is requested to complete its*  
25    *deliberations by January 1, 2007.*